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EXAMINER

NGUYEN, CAM LINH T

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 13

Application Number: 09/461,072
Filing Date: December 14, 1999
Appellant(s): GREGORAT, SANDRO

John T. Mockler
For Appellant

EXAMINER'S ANSWER

MAILED

DEC 16 2002

Technology Center 2100

This is in response to the appeal brief filed 10/30/2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

There are none.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,926,816

Bauer et al

7-1999

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

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1. Claims 2 –8, 10 – 16, 18 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer et al (U.S. 5,926,816).

♦ As per claim 2, 10, and 18,

Bauer discloses one priority art approach to synchronization has been to transmit a copy of the replica from the server to each client (See column 1 line 35-40).

This referred as “copy controller” because it copy data from server to client side.

Bauer teaches a system that comprising a server node and a plurality of client node and the database maintains data through arbitrary modification operations (See column 5 line 65-67, column 6 line 1-24). Bauer also teaches that the term synchronize is defined to be the act whereby data in two database are restored to consistency (See column 1 line 50-57, column 2 line 64-67). Furthermore, the database synchronizer determines which modification or changed occurred at the client. This modification is in client side to detect modifications by comparing client data with before-image of the client data (see column 2 line 4-20). Both client and server side have their own synchronizer (see column 8 line 3-45). This is referred same as “update controller” that applicant claim (See column 2 line 46-57).

Bauer does not clearly disclose the limitation of server and client both operate substantially concurrently. However, referring to Fig. 6A and 6B, column 4 line 40-55, column 11 line 23 – column 13 line 60, wherein Bauer teaches that proper synchronization should be frequently verified, and the communication between client and server, it is clear that the claimed provision is inherent. The process

that occurs between two checkpoints can be referred as "operate substantial concurrently". Nonetheless, to expedite prosecution, even if the limitation of the above were not inherent, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include such a step in order to generate a system that is able to operate. It must be noted that the system would not operate unless "client" and "server" were able to "handshake"

◆ As per claim 3, 11 and 19,

Bauer teaches that the databases are relational databases, which organize data in tables of row and columns of data fields (See column 2 line 25-40, column 8 line 7-10). In addition, the server maintains an update log of all operations on the server's replicated data since the time of last refresh for each client. For each row, there will be a logged entries (see column 2 line 60-67).

◆ As per claim 4, 12 and 20,

Bauer teaches that catalogs on the client and server manifest table correspondences that list in a common, indexed order all the columns of the replicated tables on that computer (see column 3 line 12-25).

◆ As per claim 5, 13 and 21,

Bauer teaches that the server compare the server effective operation with the row as stored in the server database and with timestamps stored in the update log in the purpose of minimize the amount of information communicated to the server by the client (see column 4 line 15-39). Since a replicated column on the server and the replica column on the client have the same index value into the respective table

correspondences, the indices are passed in the modification message to identify columns having modified data (See column 3 line 15-25). In other word, in order to detect changes of data record, the best thing is monitoring the index value in the table.

♦ As per claim 6 and 14,

Bauer teaches that the modifications to the database are determined by the difference comparison between the current value in the active table and the before values in the before-image table. The active table is modified by client and contains the current values of the data fields (See column 3 line 32-50).

♦ As per claim 7-8 and 15-16,

Bauer teaches in the invention that the computing system which have client side and server side application that share the same data structures, but which do not maintain a continuous connection to a single share data source. The updates performed by either client or server is propagated to the other side when a connection is established (see column 1 line 50-65). It's clearly to understand that the synchronizer is capable of determining that the client is online and is capable of activating the synchronizing operation based on the timestamp on the table in the logged entries.

♦ As per claim 22,

Bauer discloses a method of using the before image change detection technique in the invention to detect any operation to the data (See column 9 line 45 – 65).

♦ As per claim 23 – 24,

Bauer teaches “A database synchronizer in accordance with the invention manages replicated tabular data among a plurality of heterogeneous computers that are

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usually disconnected from each other", and connections must be made and individual clients synchronized with the server. In this way, modifications made at one client are propagated to the server and eventually to each client as it connects (See the abstract). It is clear that the claimed provision is inherent.

(11) Response to Argument

Appellant argues that he ". . . is not claiming a 'server' and a 'client' that operate substantially concurrently. . . . The function described by *Bauer* using Fig. 6A and Fig. 6B is the function performed by the Appellant's 'update controller 295.' The operation of the *Bauer* device does not disclose, suggest or even hint at the Appellant's claimed 'bulk copy controller 290' and 'update controller 295' operating substantially concurrently. The portion of *Bauer* cited by the Examiner simply describes a method for sending data from a server to a client." [See page 7, first full paragraph of Appellant's Brief filed 10/30/02.]

The Examiner respectfully asserts that the Appellant is trying to impermissibly read the specification into the claims. Claimed subject matter is not limited to examples disclosed in the specification, but may encompass a broader array of embodiments for carrying out the claimed invention. The claims as written, are not limited to Appellant's "bulk copy controller 290" and "update controller 295." In *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969), the court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which

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have no express basis in the claim.” As in *Prater*, the Appellant is advocating the latter, i.e., the impermissible importation of subject matters from the specification into the claim.¹

Hence, giving the claims their broadest reasonable meaning, it is evident that **client computers 20** of *Bauer* meet the Claim 2 limitation of “**bulk copy controller**.” Like Appellant’ claimed invention, *Bauer* discloses a system which achieves and maintains synchronization between source data file(s) and copy data file(s).² In this system, comprising a server node and a plurality of client nodes, a plurality of databases maintains data through arbitrary modification operations.³ Each client node maintains a respective local replicated database, each of which is replicated from the central database.⁴ The client computer 20 can act as “copy controller” to copy data from the server to its node. Both client and server have their own synchronizer⁵ as evidenced by their ability to update at either client or server side. If the modification occurs at the client side, then the client can use one of many other methods for determining the modification.⁶ Hence, the client computer is an “update controller,”

¹ See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) (holding that the PTO is not required, in the course of prosecution, to interpret claims in applications in the same manner as a court would. . . . Rather, the “PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant’s specification.”)

² See *Bauer et al.*, column 1, lines 20-26.

³ *Id.* at column 5, line 65 to column 6, line 5.

⁴ *Id.* at column 6, lines 18-21.

⁵ *Id.* at column 8, lines 3-45.

⁶ *Id.* at column 9, lines 46-49.

detecting changes and propagating modifications of the client table to the server.⁷ And, because the synchronization occurs at the time when the client computer is connected to the server computer, it can be said that both computers are operating substantially concurrently in order to detect change on both sides (client and server) and synchronize their data files.

The Appellant further argues that the “teaching of *Bauer* refutes” the assertion that the limitation of “substantially concurrently” is inherent in the operation of the server and client of *Bauer*. The Examiner disagrees. As noted above, when the client and server are connected, synchronization through hand-shaking occurs and it is evident that the client and server computers are operating substantially concurrently. To say otherwise would be unreasonable because the *Bauer* system would not be operational since the two computers would not be able to communicate. The sections of *Bauer* referred to by Appellant⁸ are misleading. The question here is whether the *Bauer* client and server operation concurrently, which they do.

In order to expedite prosecution, the Examiner has made the rejection under 35 USC §103, taking the position that even if the feature of “substantially concurrently” were not inherent in the *Bauer* reference, it would have been obvious to include such at the time the invention was made because the synchronization process occurs only through hand-shaking between client and server. Without the connection, both computers would not be operational as intended.

⁷ *Id.* at column 9, lines 35-39.

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An appeal conference was held on November 18, 2002 with conferees:

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